



# Travel Montana

## Data Usage Agreement

### **PLEASE READ THE FOLLOWING AGREEMENT CAREFULLY.**

This Data Use Agreement (the “Agreement”) is a binding contract between the undersigned user (“User”) and Travel Montana, a division of the Montana Department of Commerce (“Travel Montana”). User’s use of Travel Montana’s data as described herein is conditioned on User’s acceptance of the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, User and Travel Montana hereby agree as follows:

1. **License.** Travel Montana hereby grants User a nonexclusive, nontransferable license to (i) access textual data made available by Travel Montana (the “Data”) by a continuous live data feed or in any other format or manner that Travel Montana chooses, and (ii) to display the Data on User’s website in accordance with all of the terms and conditions of this Agreement. By accessing and using the Data, User does not acquire any right of ownership or title in it, and all right, title and interest in and to the Data will at all times remain the property of Travel Montana and its licensor(s). The Data does not include photographs or other images, and no right to access or use any photographs or other images appearing on websites operated or hosted by Travel Montana is granted herein.
2. **Term and Termination.** THIS DATA USE AGREEMENT SHALL HAVE NO VALIDITY OR EFFECT UNTIL IT HAS BEEN COMPLETELY FILLED OUT BELOW, AND IT HAS BEEN SIGNED BY BOTH USER (OR A DULY AUTHORIZED OFFICER OF USER) AND BY A DULY AUTHORIZED REPRESENTATIVE OF TRAVEL MONTANA. This Agreement shall become effective immediately upon being completely filled out and signed as provided above, and shall continue until terminated as described in this section. Either party may terminate this agreement on thirty (30) days notice to the other. Travel Montana may suspend or terminate this Agreement immediately if: (i) User or any agent or employee of User breaches this Agreement and User fails to cure such breach within ten (10) days after receipt of notice of such breach; (ii) User terminates or suspends User’s business; or (iii) User becomes subject to any federal or state bankruptcy or insolvency proceeding. Termination will not limit a party from pursuing any other remedies available to it. All rights and obligations that should by their nature survive will survive any termination of this Agreement, including but not limited to the terms of Sections 7 through 9. Upon termination, User will make no further use of the Data.
3. **Use of Data**
  - As used in this Agreement, any obligations of “you” or “User” shall apply to User and any of User’s employees or agents.
  - IF FOR ANY REASON USER DOES NOT MAINTAIN A CONTINUOUS LIVE DATA FEED, USER AGREES TO UPDATE THE DATA AT LEAST EVERY TWO WEEKS OR MORE OFTEN, SO THAT NO DATA IS EVER DISPLAYED FROM A FEED OLDER THAN TWO WEEKS.

- User shall not represent itself as Travel Montana, the Department of Commerce, or any other agency of the State of Montana, and User's website(s) and domain name(s) shall not contain any information that might lead anyone viewing the website(s) to believe otherwise. By way of example and without limiting the foregoing in any way, User shall not use "Travel Montana", "Travelmt", any other name, logo or other trademark associated with Travel Montana, or any variation of any such terms.
  - This Agreement does not give User any right to copy, transmit, display, post on a website, or otherwise use any photographs, logos, or other images, in any format whatsoever, that appear on any websites operated or hosted by Travel Montana.
- 4. Restrictions on Data Use.** User shall not use the Data in connection with (i) any website that displays, transmits, or stores any content or information in violation of any applicable law, rule or regulation, or in violation of any person's rights; (ii) any website that advertises or advocates any such activity; or (3) any website that provides links to any other website on which any such activity occurs or that advertises or advocates any such activity. Travel Montana reserves the right in its sole discretion to determine the acceptability of any website as referred to in the preceding sentence. By way of illustration, and without intending to limit the possible activities that would violate this Agreement, unacceptable activities include the following:
- **Violations of law.** Copying, posting, transmitting, or storing any content or information in violation of the Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501-6506, the CANSPAM Act or any other law or regulation restricting the use of "Spam", the Computer Fraud and Abuse Act, the Electronic Communications Privacy Act, the Stored Communications Act, applicable export control laws, or any other applicable law, rule or regulation.
  - **Violation of any intellectual property rights.**
    - Copying, posting and/or transmitting any content of any third parties (including but not limited to text, graphic, audio, or video content, or any other copyrightable material) without proper authorization.
    - Otherwise infringing or misappropriating any proprietary rights of any third parties, including but not limited to any patents, copyrights, trademarks or trade secrets.
  - **Fraudulent or misleading practices.**
    - Impersonating another person or misrepresenting authorization to act on behalf of others.
    - Transmitting messages that do not correctly identify the sender.
    - Any other fraudulent or misleading practice.
  - **Circumvention of security measures.**
    - Circumventing or attempting to circumvent the security or integrity of any computing systems or networks in order to gain unauthorized access thereto.
    - Providing passwords or access codes to unauthorized persons.

- **Distribution of viruses.** Intentionally uploading or transmitting any virus, worm, Trojan horse, or any other code manifesting any contaminating or destructive properties.
- **Denial of service attacks.** Causing or attempting to cause denial of service attacks or any other interference with the Internet service of any other person.
- **Inappropriate practices.**
  - Copying, posting, storing or transmitting any pornographic, obscene, immoral, indecent or vulgar content.
  - Posting or transmitting any information that slanders, libels or defames any person.
  - Posting or transmitting any information that violates any person's right to privacy, presents any person in a false light, or misappropriates any person's right to publicity or right to control the use of his or her own name or likeness.
  - Posting or transmitting any information that is harassing, threatening, abusive, racist, hateful or otherwise offensive, or that constitutes stalking.
  - Offering or selling any goods or services that are illegal in light of the purchaser's age, jurisdiction or other circumstances.

5. **Monitoring.** TRAVEL MONTANA DISCLAIMS ANY OBLIGATION TO MONITOR ANY USE OF DATA. Notwithstanding the preceding sentence, Travel Montana shall have the right but not the duty to review and monitor User's use of Data, and may refuse or disable User's access to Data in its sole discretion for any reason without prior notice.
6. **Infringing Materials; Digital Millennium Copyright Act Policy.** It is Travel Montana's policy to fully comply with the Digital Millennium Copyright Act ("DMCA") and any applicable regulations. Although Travel Montana assumes no obligation to police any Data or websites that use Data for the presence of materials that may be infringing or are otherwise inappropriate, Travel Montana reserves the right in its sole discretion to remove or disable access to any content, and Travel Montana will terminate the access rights of a repeat infringer in appropriate circumstances. You may report alleged copyright infringement by sending a notice that complies with the DMCA to Travel Montana's designated agent to receive notification of claimed infringement (the "Designated Agent") at the following address:

Brian Pierce  
 Travel Montana, Montana Department of Commerce  
 301 South Park Ave.  
 Helena, MT 59620  
 Telephone: 406-841-2887  
 Fax: 406-841-2871  
 bpierce@mt.gov

Travel Montana reserves the right to change its Designated Agent without prior notice, subject to the applicable requirements of the DMCA and any applicable regulations.

All notices of alleged copyright infringement should include substantially the following:

- A description of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- A description of the material that you claim to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Travel Montana to locate the material.
- Information reasonably sufficient to permit Travel Montana to contact you, such as an address, telephone number, and, if available, an electronic mail address at which you may be contacted.
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, the owner's agent, or by law.
- A statement, signed by physical or electronic signature, that the information in the notification is accurate, and, under penalty of perjury, that you are, or are authorized to act on behalf of, the owner of an exclusive right that is allegedly infringed.

Travel Montana's Designated Agent may request additional information from you.

- PURSUANT TO THE DMCA, 17 U.S.C. § 512(f), ANY PERSON WHO KNOWINGLY MAKES A MATERIAL MISREPRESENTATION THAT MATERIAL IS INFRINGING, OR THAT MATERIAL WAS REMOVED OR DISABLED BY MISTAKE OR MISIDENTIFICATION, MAY BE LIABLE FOR ANY DAMAGES, INCLUDING COSTS AND ATTORNEYS' FEES, INCURRED BY A SERVICE PROVIDER WHO IS INJURED BY SUCH MISREPRESENTATION, OR BY THE COPYRIGHT OWNER OR LICENSEE, AS THE RESULT OF THE SERVICE PROVIDER RELYING UPON SUCH MISREPRESENTATION IN REMOVING OR DISABLING ACCESS TO SUCH MATERIAL, OR IN REPLACING OR CEASING TO DISABLE ACCESS TO THE MATERIAL.

For a full description of your rights under the DMCA and the procedures that must be followed, please see the full text of the DMCA, which may be found at [www.copyright.gov](http://www.copyright.gov). Nothing in these policies and terms of use is intended to supplant the requirements of the DMCA. In the event of any conflict between any provision of these policies and terms of use and the DMCA, the applicable provision of the DMCA shall control.

7. **Disclaimers of Warranties.** TRAVEL MONTANA AND ITS LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT ITS WEBSITE AND DATA, INCLUDING WITHOUT LIMITATION THE SUITABILITY OF THE CONTENT AND OTHER INFORMATION CONTAINED IN THE DATA FOR ANY PURPOSE. ALL DATA IS PROVIDED "AS IS", AND TRAVEL MONTANA AND/OR ITS LICENSORS HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH REGARD TO ITS WEB SITE AND DATA, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, AND AVAILABILITY. FURTHERMORE, TRAVEL MONTANA AND ITS LICENSORS DO NOT WARRANT (I) THE ACCURACY OF ANY DATA; (II) THAT THE WEB SITE AND DATA WILL MEET USER'S REQUIREMENTS; (III) THAT THE OPERATION OF THE WEBSITE OR ANY DATA FEED WILL BE ERROR-FREE; (IV) THAT ALL DEFECTS WILL BE CORRECTED; OR (V) THAT THE WEB SITE AND ANY DATA FEED WILL FUNCTION

PROPERLY IN COMBINATION WITH USER'S EQUIPMENT. TRAVEL MONTANA DOES NOT WARRANT THAT THE FILES AVAILABLE FOR DOWNLOADING WILL BE FREE OF INFECTION BY VIRUSES, WORMS, TROJAN HORSES OR OTHER CODE THAT MANIFESTS CONTAMINATING OR DESTRUCTIVE PROPERTIES. TRAVEL MONTANA ASSUMES NO LIABILITY FOR ANY ACTIVITIES OF ANY USERS OF DATA, INCLUDING BUT NOT LIMITED TO ANY INFRINGING, DEFAMATORY, OFFENSIVE OR ILLEGAL ACTIVITIES WHATSOEVER.

8. **Limitation of Remedies and Limitation of Liabilities.**

USER'S SOLE AND EXCLUSIVE REMEDY FOR USER'S INABILITY TO USE OR ACCESS THE WEB SITE OR DATA, DEFECTS IN THE WEB SITE OR DATA, OR ANY OTHER MATTER ARISING FROM USER'S USE OF THE WEB SITE OR DATA SHALL BE TO CEASE USING THE WEBSITE AND DATA.

ACTIONS OR INACTIONS OF THIRD PARTIES MAY RESULT IN SITUATIONS IN WHICH USER'S INTERNET CONNECTION, USE OF THE WEB SITE, THE DATA OR OTHER INFORMATION MAY BE IMPAIRED, DISRUPTED OR DAMAGED. TRAVEL MONTANA DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE INTERNET, AND SO DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH ACTIONS OR INACTIONS.

IN NO EVENT SHALL TRAVEL MONTANA OR ITS LICENSORS BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS RESULTING FROM BUSINESS DISRUPTION, LOSS OF DATA, LOST PROFITS, LOST GOODWILL, OR DAMAGE TO SYSTEMS OR DATA, WHETHER IN AN ACTION FOR CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF TRAVEL MONTANA OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE OBLIGATIONS OF TRAVEL MONTANA AND USER'S RIGHTS AND REMEDIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND ARE GIVEN IN SUBSTITUTION FOR ALL OTHER WARRANTIES, OBLIGATIONS, AND LIABILITIES OF LICENSOR.

9. **Indemnification.** User shall indemnify, defend and hold harmless Travel Montana and its officers, employees, agents and licensors from and against any and all lawsuits, claims, expenses (including reasonable attorneys' fees), settlements, damages, judgments and the like arising from User's use of the Data.
10. **Injunctive Relief.** User agrees that, if User or any employee or agent of User breaches or threatens to breach this Agreement in any manner, Travel Montana may suffer irreparable damage, money damages will be inadequate, and Travel Montana shall be entitled to preliminary and other injunctive relief by a court of competent jurisdiction against any such breach or threatened breach, without having to wait for User to cure a breach and without having to post a bond or other security. Such injunctive relief shall be in addition to, and in no way in limitation of, any and all other remedies Travel Montana may have in law or equity, or under this Agreement, for the enforcement of this Agreement.

11. **General**

- 11.1. **Assignment, Successors.** No right or license under this Agreement may be assigned or transferred by User nor may any duty be delegated by User without Travel Montana's prior written consent. Any assignment, transfer or delegation in contradiction of this provision shall be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the successors and permitted assigns of User and Travel Montana.
- 11.2. **Waiver, Severability, Amendment.** Waiver of a breach of or right hereunder will not constitute a waiver of any other or subsequent breach or right. If any provision herein shall be held by a court of competent jurisdiction to be contrary to law, that provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions herein will remain in full force and effect. This Agreement may be amended only in a document signed by authorized representatives of User and Travel Montana.
- 11.3. **Governing Law.** This Agreement shall be governed by Montana law excluding its conflicts of laws principles. The exclusive venue for any action between the parties shall be Yellowstone County, State of Montana.
- 11.4. **Entire Agreement.** This Agreement is the complete and exclusive agreement between the parties and supersedes all previous and contemporaneous agreements, proposals and communications with respect to this subject matter.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
User's Name

MONTANA PROMOTION DIVISION-  
TRAVEL MONTANA

By: \_\_\_\_\_

By: \_\_\_\_\_

Betsy Baumgart  
Division Administrator

\_\_\_\_\_  
(Print or type name)

Title: \_\_\_\_\_

\_\_\_\_\_  
User's Street/P.O. Box

\_\_\_\_\_  
User's City/State/Zip Code

\_\_\_\_\_  
User's Telephone Number

\_\_\_\_\_  
User's Website

\_\_\_\_\_  
User's Email Address

User's Business Name (If different from above)

Please mail to: Travel Montana, PO Box 200533, Helena, MT 59620